

Resource Guide: Student Conduct and Discipline Policy

Background

Pursuant to Section 6.6 of the Charter Contract, “The School shall adopt, update and adhere to written policies concerning standards of student conduct and discipline which shall comply with federal and State laws. The School shall provide copies to the School's parents and students at the start of each school year.”

Minimum requirements for student conduct and discipline are set forth in the Charter Contract and in state and federal law and regulations. Due to the many and often overlapping nature of these requirements, this guide is organized by topic, with appropriate citations to the contract, regulations, and law provided. Also, the law surrounding each topic is ever-changing and often lengthy and dense. The information provided thus here provides a summary of the requirements and should not be construed to be definitive. Governing boards are strongly encouraged to read the laws and regulations and to consult with their Deputy Assistant Attorney General.

Following the summary, a checklist is provided that governing boards may find useful when drafting and revising their student conduct and discipline policies.

A. Due Process

The following provides the minimal requirements for due process and dismissal that are consistent with the Fourteenth Amendment of the United States Constitution and Sections 5.1 and 5.6 of the Charter Contract. Additional requirements applying to students with disabilities (including students not yet receiving special education services but who have been identified by their schools as having disabilities) are provided in the following section.

Suspensions of ten days or less: School administrators must provide the student written or oral notice of the charges against him or her. Additionally, if the student denies the charges, he or she must receive an explanation of the evidence the authorities have and must be presented an opportunity to refute such evidence.

Suspension of more than ten days or expulsion: The student is entitled to same due process as stated above but also must be afforded a formal hearing before an impartial body. The student may have a lawyer present and may cross-examine witnesses.

B. Students with Disabilities under IDEA

Hawaii charter schools are subject to federal and state laws and regulations governing the discipline of students with disabilities. For students on an Individualized Education Plans under the federal Individuals with Disabilities Act (IDEA), these regulations are highly specific in terms of discipline and the additional due process that must be afforded in certain circumstances. What follows is an overview of some of the key provisions relating to procedures when disciplining students with disabilities, but the list is far from exhaustive. Schools should familiarize themselves with Sections 530 through 536 from Part 300 of Code of Federal Regulations (go [here](#) and access the related regulations from the right-hand column). The state regulations (§8-60-70 through 75) follow the federal regulations and can be read [here](#).

1. Discipline for Students with Disabilities, In General

Students with disabilities receive the same basic due process rights that apply to all students. To the extent that similar actions are taken for students without disabilities, schools may remove children for no more than 10 consecutive school days from their current placement to an appropriate interim alternative education setting, another setting, or suspension.

Any suspensions that occur after 10 total days in a school year constitute a change in placement. The 10 days refer to either consecutive or cumulative days. Specific actions must be taken by the school, depending in part on whether the behavior prompting the discipline is a manifestation of the student's disability. For more information on these actions, see [§8-60-75](#).

2. Protections for Students Not Yet Eligible for Special Education and Related Services

If a child has not been determined eligible for special education and related services and violates a code of student conduct, but the school had knowledge before the behavior that brought about the disciplinary action occurred, that the child was a child with a disability, then the child may assert any of the protections described in this notice. For more information, see 34 CFR §300.534 or [HAR §8-60-79](#).

3. Appeals

Parents/guardians may file a due process complaint if they disagree with any decision regarding placement made under the discipline provisions or the manifestation determination. For more information, see 34 CFR §300.532 or [HAR §8-60-77](#).

C. Students with Disabilities Under Section 504 of the Rehabilitation Act of 1973

Students with disabilities under Section 504 of the federal Rehabilitation Act of 1973 are subject to the same disciplinary procedures as non-disabled students, provided the behavior is not caused by or is a manifestation of their disabilities. According to the Office of Civil Rights, schools must hold a hearing before suspending a student with a disability under Section 504 for more than 10 cumulative. Such students must also "not be subjected to discriminatorily

different treatment in discipline, and must not be disciplined more harshly or frequently than similarly situated students without disabilities for the same infractions.”

For more information, see <http://www2.ed.gov/documents/news/section-504.pdf>.

D. Physical Punishment

Pursuant to Section 6.2 of the Charter Contract, “No physical punishment of any kind may be inflicted upon any pupil, but reasonable force may be used by a principal, principal's agent, teacher or a person otherwise entrusted with the care or supervision for a special purpose of a minor in order to restrain a pupil in attendance at school from hurting oneself or any other person or property, and reasonable force may be used as delineated in Sec. 703-309 (2), HRS.”

According to [§703-309 \(2\)](#) of the Hawaii Revised Statutes, reasonable force may be used when,

“[t]he actor is a principal, the principal's agent, a teacher, or a person otherwise entrusted with the care or supervision for a special purpose of a minor, and:

(a) The actor believes that the force used is necessary to further that special purpose, including maintenance of reasonable discipline in a school, class, other group, or at activities supervised by the department of education held on or off school property and that the use of force is consistent with the welfare of the minor; and

(b) The degree of force, if it had been used by the parent or guardian of the minor, would not be unjustifiable under paragraph (1)(b).

E. Firearms

Schools must comply with the federal Gun Free Schools Act, [20 U.S.C. §7151](#), which requires expulsion of a student for not less than one year if the student is determined to have brought a firearm to school, or to have possessed a firearm at school.

Conduct and Discipline—Questions to Consider

The following questions are offered to help charter schools develop and implement a student conduct and discipline that meets the minimal legal and contractual requirements. Although Hawaii's charter schools are not subject to Chapter 19, they may want to consult it when devising and revising their student conduct and discipline policies. To read Chapter 19, go [here](#).

Due Process. Does the school's policy set forth the minimal due process requirements for students, consistent with applicable law?

Students with disabilities. Does the school's policy address the discipline procedures for and placement of students with disabilities, consistent with applicable law?

Specificity. Does the policy specify acts for which a student may be disciplined and the consequences (or range of consequences) for each act?

Authority. Does the policy address who has the authority for carrying out the discipline policy and for handling any appeals?

Dissemination. Pursuant to Section 6.6 of the Charter Contract, did the school provide copies of the school's discipline and conduct policy to parents and students at the start of the school year?